

SUBCHAPTER H—CLAUSES AND FORMS

PART 3552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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AUTHORITY: 40 U.S.C. 486(c); Articles IX and XI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7664, Mar. 2, 1990, unless otherwise noted.

Subpart 3552.2—Texts of Provisions and Clauses

3552.209-70 Organizational Conflict of Interest Certification/Disclosure.

As prescribed in 3509.508-1, insert the following provision:

ORGANIZATIONAL CONFLICT OF INTEREST CERTIFICATION/DISCLOSURE (JAN 1990)

(a) An “organizational conflict of interest” exists when the nature of the work to be performed under a proposed Government contract may, without some restriction on future activities, (1) result in an unfair competitive advantage to the contractor, or (2) impair the contractor’s objectivity in performing the contract work.

(b) The offeror certifies, to the best of its knowledge and belief, that it [] is, [] is not (check applicable block) aware of any information bearing on the existence of any potential organizational conflict of interest. If the offeror is aware of information bearing on whether a potential conflict may exist, the offeror shall provide a disclosure statement with its offer which describes all relevant information concerning any past, present, or planned interests bearing on whether it (including its chief executives and directors, or any proposed consultant or subcontractor) may have a potential organizational conflict of interest.

(c) The offeror should refer to FAR subpart 9.5 and PAR subpart 3509.5 for policies and procedures for avoiding, neutralizing, or mitigating organizational conflicts of interest.

(d) If the Contracting Officer determines that a potential conflict exists, the offeror shall not receive an award unless the conflict

can be avoided or otherwise resolved through the inclusion of a special contract clause or other appropriate means. The terms of any special clause are subject to negotiation.

(End of provision)

3552.209-71 Organizational Conflict of Interest.

As prescribed in 3509.508-2, insert the following clause:

ORGANIZATIONAL CONFLICT OF INTEREST (JAN 1990)

(a) The Contractor warrants that, to the best of the Contractor's knowledge and belief: (1) There are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined in provision 3552.209-70, Organizational Conflict of Interest Certification/Disclosure, of the solicitation; or (2) That the Contractor has disclosed all such relevant information.

(b) The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the Contractor will make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict.

(c) Remedies—The Panama Canal Commission may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate the contract for default, debar the Contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(d) The contractor further agrees to insert in any subcontract or consultant agreement hereunder, terms which shall conform substantially to the language of this clause, including this paragraph (d).

(End of clause)

3552.210-70 Brand Name Products or Equal.

As prescribed in 3510.011(h), insert the following provision:

BRAND NAME PRODUCTS OR EQUAL (JAN 1990)

(As used in this provision, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this (*invitation for bids/request for proposals*) have been identified in the schedule by a "brand name or equal" description, such identification is characteristic of products that will be satisfactory. (*Bids/Proposals*) offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the (*bids/proposals*) and are determined by the Government to meet fully the salient characteristics, requirements listed in the invitation.

(b) Unless the (*bidder/offeror*) clearly indicates in its (*bid/proposal*) that it is offering an "equal" product, its (*bid/proposal*) shall be considered as offering a brand name product referenced in the (*invitation for bids/request for proposals*).

(c)(1) If the (*bidder/offeror*) proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space identified in the (*bid/proposal*). The evaluation of (*bids/proposals*) and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the (*bidder/offeror*) or identified in its (*bid/proposal*) as well as other information reasonably available to the purchasing activity. Caution to (*bidders/offerors*): the purchasing activity is not responsible for locating or securing any information which is not identified in the (*bid/proposal*) and reasonably available to the purchasing activity. Accordingly, to ensure that sufficient information is available, the (*bidder/offeror*) shall furnish as part of its (*bid/proposal*) all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the salient characteristics requirement of the (*invitation for bids/request for proposals*), and (ii) establish exactly what the (*bidder/offeror*) proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the (*bidder/offeror*) proposes to modify a product so as to make it conform to the requirements of the (*invitation for bids/request for proposals*). It shall (i) include in its (*bid/proposal*) a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after (*bid/proposal*) opening to make a product conform to a brand name product referenced in the (*invitation for bids/request for proposals*) will not be considered.